MICHIGAN SUPREME COURT

PUBLIC HEARING
November 30, 2011

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CHIEF JUSTICE YOUNG: Good morning and welcome on this first Michigan snow day. I don't know whether you're more surprised to see us or we're more surprised to see you. But we all made it, and so did you so we are happy to begin our public hearing on the matters that are up for consideration this morning. On Item 1 – administrative matter 2002-24 concerning the Michigan Rules of Professional Conduct. We have three speakers who want to address that issue. Mr. Matz.

ITEM 1: 2002-24 – MRPC 7.3

MR. MATZ: Good morning.

CHIEF JUSTICE YOUNG: Good morning.

MR. MATZ: Mr. Chief Justice, Justices. May it please the Court. My name is Steve Matz of the law offices of Matz & Pietsch. I've had the privilege of practicing law in the state of Michigan for the last 34 years. This is the first time I've ever had an opportunity to appear before the Supreme Court.

Today I speak in opposition to amending Michigan Rule of Professional Conduct 7.3 to include a 30-day waiting period before sending a direct mail letter. Since the United States Supreme Court decided *Shapero v Kentucky Bar Assn* in 1988, sending truthful nondeceptive letters to individuals with a specific problem has been legal, ethical, and perhaps the best way to assist an individual in making an informed choice about the selection of an attorney. Receiving information from a lawyer willing to travel to meet an individual in his home means that his choice is not limited to a handful of local attorneys. Unlike the thirty-second commercial or billboard which provides no useful information upon which an individual may rely except perhaps for a catchy telephone number, direct mail may provide a brochure, booklet, photos, and access to a website at the exact time an individual who has suffered an accident requires this information, then a prospective client can do some real comparison shopping for an attorney. Most importantly, from a client's perspective, direct mail marketing costs less than TV advertising, and at least in our firm those costs are passed on

to our clients. At Matz & Pietsch we charge our clients who have suffered an injury as a result of a motor vehicle accident 22% of the net recovery. As you know, the maximum percentage permitted by this Court and the state of Michigan is 33 1/3%. In our direct mail literature we raise the level of client expectations considerably. We make ourselves available to our clients 24 hours a day through email, fax, cell phone numbers, or at the office. We will drive anywhere in the state to meet a client. This is a level of service unheard of 33 years ago when I first began practicing, it's made possible by modern technology and the knowledge that if we don't provide a high level of service clients can easily find another attorney who will, and we do this all at a reduce cost made possible by the utilization of direct mail marketing. If you impose a 30-day waiting period and you deprive an accident victim of the most useful information they can receive at the exact time they need it so that they can deal with the insurance companies, hospitals, doctors, and investigators who are not bound by a 30-day waiting period, you take that most useful information out of the hands of the individuals at the most critical time in their decision making process. The proposed 30-day waiting period does not help clients, is anticompetitive, reduces client options, and costs the clients money. I would urge the Court to reject the 30-day waiting period.

CHIEF JUSTICE YOUNG: Counsel? I'm – there are actually two aspects of the proposed change that are in dispute. One, which you've addressed as the 30-day waiting period, the other is labeling written advertisement – written solicitation materials as advertisement - you didn't speak to that.

MR. MATZ: No, figuring that –

CHIEF JUSTICE YOUNG: Is there an injury to the profession by labeling these solicitations as advertising material?

MR. MATZ: The short answer Mr. Chief Justice is no, there is not. However, there is no need that leads to that sort of change. The reason I didn't speak to the issue is that the 30-day waiting period for me is the most important issue, and I had a limited time to speak.

CHIEF JUSTICE YOUNG: I understand.

MR. MATZ: I presided – I presented to the Court in my written comments a copy of the envelope that we use when we send our direct mail literature which cannot in any way be mistaken

for a sober or somber letter from an attorney. It – and as far as I know, the –

CHIEF JUSTICE YOUNG: That may be your practice, but that isn't required at this point.

MR. MATZ: No, but it seems to be the standard of practice among plaintiffs personal injury attorneys to provide just that sort of literature. The last thing we would want to do would – to have our letters or our advertisements be confused with anything else. I don't – Candidly, I can't speak to what other attorneys may do in other areas of practice, when it comes to plaintiffs personal injury, I don't believe clients are confused by the letters they're receiving.

CHIEF JUSTICE YOUNG: As I understand it, Michigan currently – in the absence of this waiting period – is the outlier. I think roughly 40 or 41 jurisdictions have such a provision, isn't that right?

MR. MATZ: The provisions were enacted primarily somewhere around 17 years ago after the *Florida v Went For It* case where the Supreme Court said that Florida could enact a 30-day waiting period. The 30-day waiting period, however, was enacted based upon the conjecture of the state bars that bad things would happened if letters were sent. Michigan's had the luxury of taking a look at what has happened in Michigan since the *Went For It* case, there is no public outcry about individuals receiving letters or being confused or not wanting to receiving this information – quite the opposite. I've taken a look at our lists in terms of the hundreds of thousands of dollars in attorney fees that clients have saved just in the last nine months because we charge less and certainly our experience is our clients are thrilled with us.

CHIEF JUSTICE YOUNG: Thank you.

MR. MATZ: Thank you.

CHIEF JUSTICE YOUNG: Samuel Pietsch. I take it you are related to Mr. Matz.

MR. PIETSCH: Yes, I'm the Pietsch in Matz & Pietsch your honor. Good morning and thank you –

CHIEF JUSTICE YOUNG: Well, we get the double teaming here today. Welcome.

MR. PIETSCH: Well, it's important to all of us. And good morning Mr. Chief Justice and to the Justices of the Court, and thank you for opportunity to speak. If I may modify my remarks to pick up on the momentum of the last question, is there harm to the profession by putting the words advertising on the documents. I think that there is. I think that the harm is that it plays into a perception that lawyers know better than other people. The – we do this every day, and we've done direct mail for over 20 years. We're one of the leading firms that does direct mail in the personal injury field so we get a lot of feedback. And Mr. Chief Justice, your honor, you might be surprised to know that in all the years that we've done this we have never ever had a single person call us mistakenly thinking that this was a subpoena or a summons or some kind of call to action – it has never happened out of thousands of times. Our view is that the art of public sophistication in terms of marketing and advertising and using the internet, has advanced so far that, frankly, the idea of putting the words advertising material on something that's obviously an advertisement does do harm because it plays into the perception that we have lost touch with what's really going on out there. So in that way I do think there's a harm. There are many issues that we could confront as attorneys to better our standing. No one is more concerned with how we appear and what we do as attorneys than my partner and I are. We know that the material we send out is going to be scrupulously reviewed by anyone who might not like it or who might wish to oppose it, so it is completely tailored to be useful, truthful, nondeceptive, and user friendly. We are giving a roadmap in our material to people who are in tremendous difficulty, who may be mistakenly using their Medicare or their ERISA plan for their health care and getting themselves into a terrible tangle that could have been avoided with one phone call. The rest of the world doesn't wait for people, doesn't wait 30 days to get in touch with these people. The other side, the other insurance company, the prosecutor, the police, the doctors billing department, the hospital, are all in touch with these people. They need help; they're getting it in their hands with a roadmap. The alternative to the 30-day waiting period all that happens is these same people are calling a lawyer on TV that they don't know, they're still the same victims, they're still in this same supposed grieving period, and now they're on the phone getting a sales pitch. What we send them is no call to action at all. If they want to use the material on their own, fine, if they want to throw it away, fine. What happens if we destroy direct mail by putting a delay on it, my partner and I have to go back on TV, we have to raise our fee, there's no

more 22% - we need to finance the program – and all we do is push it as I think Justice Markman said in his earlier remarks – it just chooses as winners the big firms charging the bigger fees at the expense of people that could have provided the same service or better at a lower fee. We don't want to go that way. We urge the Court to reject these proposals – both the words advertising material on what's obviously an ad, and to reject the 30-day waiting period as doing nothing more than presenting an anticompetitive, anti-consumer disadvantage to the process.

CHIEF JUSTICE YOUNG: Could you tell me how you're disadvantaged in comparison to the larger firms?

MR. PIETSCH: How we would be?

CHIEF JUSTICE YOUNG: Yeah.

MR. PIETSCH: Okay. If we – the waiting period will affectively destroy the effectiveness of direct mail because these aggrieved people that we're concerned about – that we all are concerned about – aren't going to wait 30 days, they're going to call somebody on TV. They're not gonna wait so the direct mail will affectively be destroyed by the waiting period. So we're gonna have to shift our emphasis and go back on television, and so the unintended consequence will be that instead of improving the view of the public about lawyers, there – you won't be able to now watch a basketball game or sit on a park bench or drive by a billboard without seeing a lawyer ad.

CHIEF JUSTICE YOUNG: It's hard to do that now.

MR. PIETSCH: Add to that because that's where we're gonna have to go. And to be able to afford that we can't do it for 22%. The only person that suffers in this is the person that could have had the same service, and we all know that many cases are fungible, they get the same amount of money that they were gonna get no matter what competent lawyer they hired. The difference between 22% and 33% isn't to the lawyer's advantage, it's to the client's advantage, and in that way having to go back to 33% hurts only one person and that's the one we should be most concerned about.

JUSTICE MARKMAN: You're saying it's not as if there's no advertising during the interim period, it's just a different kind of advertising affectively.

MR. PIETSCH: Right. The advertising that there is is what we all see when we flip on the TV, that's still there, and these people are the same victims. Let's assume it's true that they're very hurt and very defeated and very vulnerable during this time. Okay, let's assume that that's true. Well, they still have to do something about their problem. They're gonna pick up the phone and get a sales pitch, that hasn't helped them, they're getting a sales pitch. What we sent them was a roadmap to how to fix it on their own if they want to. If we took that away from them, we're charging them a higher fee, and at the time when they're most vulnerable, when we should be most concerned about them, they're getting a sales pitch from an ad that they saw during a basketball game.

CHIEF JUSTICE YOUNG: Thank you.

MR. PIETSCH: Thank you your honor. Thank you your honors. Good morning.

CHIEF JUSTICE YOUNG: Janet Welch.

MS. WELCH: Chief Justice Young, Justices. Janet Welch on behalf of the State Bar of Michigan. I have two simple purposes in being here this morning and I will take less than three minutes to accomplish. I want to thank the Court for pulling back the rule that had been scheduled to take effect in September and allowing the Bar to comment on the rule, and to express the hope of the Board of Commissioners that the comments that you've received on the current rule have persuaded you that the changes that you're now contemplating are not an improvement on the status quo. I have to say just shortly in addition to that that in going over all the materials last night, and I am not a First Amendment scholar or even a student of the Rules of Professional Conduct, the writing that resonated with me most actually was the observations of Justice Markman last spring about the transformational nature of the advertising world in which we're living. And it seems to me that one of the reasons that we are struggling with this issue despite wanting advertising by lawyers to be dignified and clear and helpful and not misleading, is that the advertising environment is changing so dramatically and on top of that we have a pretty tricky constitutional landmark to be navigating. And so I just wanted to note how helpful it seemed to me to put the entire struggle to regulate lawyer advertising in the context that Justice Markman observed just a few months ago.

CHIEF JUSTICE YOUNG: Thank you very much.

MS. WELCH: So thank you for inviting us to speak.

CHIEF JUSTICE YOUNG: Those are all the speakers – those are all the speakers that are scheduled for the first item. The next – Item 2 is 2008-36 - which concerns the proposed amendment to MCR 7.202. And the speakers – there are two speakers – Mr. Baughman.

ITEM 2 – 2008-36 – MCR 7.202

MR. BAUGHMAN: Good morning. Tim Baughman from the Wayne County Prosecutor's Office and I'm here to suggest that the proposal be adopted. As the Court's aware, this arises in part out of *People v Richmond*. All appeals in the Wayne County Prosecutor's Office cross my desk, particularly, and including requests for prosecution appeals when we feel aggrieved by something. And as you'll recall from *Richmond* what happens from time to time is the judge will enter a - what I will call a dispositive evidentiary ruling – suppress the drugs in a drug case or the guns in a gun case - but not dismiss the case. The prosecution is the only party in the justice system, civil or criminal, and in that situation if they submit to trial and get directed out can't appeal that direct – double jeopardy bars it – that's the end. This doesn't happen a lot I mean most of the time a judge will dismiss in that circumstance, but from time to time the judge doesn't dismiss. And what had happened before *Richmond* is the prosecutor would say I can't proceed without the evidence, I'm gonna have to dismiss, I move to dismiss. And we would appeal and if we won the case would go – come back and go to trial or be pled – if we didn't, it was over. The proposal here would treat as a final order a – an order which is in my view actually final but has not been denominated as such, and there's a quid pro quo on the prosecutor's side that is if the appeal is lost, the case is over unless there's discovery of new evidence that couldn't have been discovered with reasonable diligence. So it's – it's – the prosecutors are not going to willy-nilly do this because the case is over if they lose the appeal. Just as if a – the judge had entered a dismissal on his or her own motion or on motion of the defense, and prosecutor had appealed and lost the case would remain over. So it seems to me that that's a reasonable way to proceed and I would urge the Court to adopt that position. It doesn't happen a lot though within the last two weeks we've had a couple of cases where judges have suppressed all the evidence and not dismissed the case which puts us in a – kind of an awkward position.

CHIEF JUSTICE YOUNG: What is the position then? Under the current –

MR. BAUGHMAN: We have a choice to either seek a stay, which frequently is denied –

CHIEF JUSTICE YOUNG: Yes.

MR. BAUGHMAN: and seek an emergency interlocutory appeal to the Court of Appeals if time allows. Now I don't think it's something that needs to be dealt with here, but in – at some point it would be good to look at the notion that these rulings should be made in advance of trial instead of on trial date or during trial. Judges at least – and maybe it's a Wayne County experience – tend to – some judges allow these motions to be made very late in the game or to rule on them right when the case is going to trial and then deny stay, and as a practical matter it's been very difficult to get to the Court of Appeals.

CHIEF JUSTICE YOUNG: What I'm trying –

MR. BAUGHMAN: And then from the Court of Appeals standpoint it's difficult for them to rule because it's hard to get a record to them in that –

CHIEF JUSTICE YOUNG: What I'm trying to understand is what would be the consequence of doing nothing?

MR. BAUGHMAN: Of doing – if the prosecutor did nothing.

CHIEF JUSTICE YOUNG: No.

MR. BAUGHMAN: If the Court did nothing – well then if the prosecutor filed for an interlocutory appeal and it was denied they'd have – they'd have to proceed to trial and be directed out and the case would be over without any ruling on the merits by an appellate court as to whether or not what the trial judge did was correct or not. And, again, I think this is just – there's just a balance in the system where the system is always going to be imbalanced in that the prosecution cannot appeal a directed verdict – everybody else can - so that imbalance will exist. But at least if a dispositive evidentiary ruling is entered – if the prosecution is willing to say case is over unless we get this overturned to allow us to appeal by right, it seems to be a fair way to proceed.

CHIEF JUSTICE YOUNG: Thank you.

MR. BAUGHMAN: Any other questions?

JUSTICE MARKMAN: Mr. Baughman?

MR. BAUGHMAN: Yes.

JUSTICE MARKMAN: What is your response to the argument raised by some individuals that the flaw in Alternative A, which I understand you support, is that it's inadequately symmetrical, it – and that we should consider allowing defense counsel to certify the denial of a motion to suppress as a final judgment. What's your response to that symmetry argument?

MR. BAUGHMAN: They have no quid pro quo that we – the prosecution does. The prosecution's quid pro quo in this rule is the case is over if the appeal is lost. The defense is not prepared to say if we lose the appeal a directed verdict of guilty will be entered. And, in fact, that option already exists – they can take a conditional plea – and plead and preserve the issue and present it on appeal. So the symmetry is never going to be there and the prosecution is never going to be able to have the same rights the defense does. We only want the ability to appeal by right when what the judge has really done is entered a dispositive order but hasn't called it that. And we're willing to trade off that we understand that we can't manipulate this, we never have in the past, and take this – certify that we can't proceed without the evidence and then lose the appeal and say oh, yeah, we're wrong, we really can proceed. Can't do that, case is over. That's the trade-off and as I – again, before *Richmond* these happened from time to time and it was never the case you know you'll never find a case where the prosecutor appealed from that then final order that the prosecutor had sought, lost the appeal, and then tried to proceed anyway – it just never happened.

JUSTICE MARKMAN: Mr. Baughman you've also submitted your thoughts on both Alternative A and B, are you aware of the language submitted by the Criminal Jurisprudence and Practice Committee of the State Bar? Have you seen that?

MR. BAUGHMAN: I'm not sure. Is it – is this – I had heard something about one that adds that the –

CHIEF JUSTICE YOUNG: The symmetry issue. It adds the right of both defendant and prosecutor.

MR. BAUGHMAN: But this – the difficulty with that is there is – the defense is already protected. If they lose a pretrial motion and the defendant is convicted, the issue can be presented on appeal, it doesn't need to be heard pretrial. If the – in that same situation, the prosecution can't have the issue heard. So this is just to restore that degree of symmetry that's possible, and even that isn't symmetrical. The defense doesn't need that; it's preserved – the issue is there – they can raise it. If you had a situation perhaps, and even this I doubt would justify it, where you were seeing lots of the cases reversed on these kinds of defense motions then maybe you'd say gosh, maybe there should be more interlocutory appeals heard by the Court of Appeals. Frankly, if it's truly interlocutory - it's not outcome determinative as a prosecutor - and we lose it we'll take the interlocutory appeal. That's the way it ought to be. We only want to do this because I mean look at the risk on the other side – we only want this when really what's been entered is a dispositive order but the judge hasn't called it that and we're in the awkward position if we say the wrong thing we're gonna be barred.

JUSTICE MARY BETH KELLY: But doesn't the – doesn't the State Bar proposal require that the trial court enter the stay and allow the appeal to proceed?

MR. BAUGHMAN: Yes, it does, but as I understand it it also has the same provision for defense appeals –

JUSTICE MARY BETH KELLY: Right.

MR. BAUGHMAN: but there's no need for that, but the reason the prosecution needs this is because it's the only time we can do it – the defense has it preserved already. And if they're willing to concede guilt, as we're willing to concede the case can't go forward, they can take a conditional plea and go ahead. It's just – it isn't needed there. It is needed here because we're the only party that gets barred by a directed verdict from any appeal.

JUSTICE MARY BETH KELLY: Well, when you say need – the necessity is to have litigation of the suppression issue before the trial can go forward and that's what the –

MR. BAUGHMAN: When it is truly determinative of the case, it's not really an interlocutory order. You can have – we could have a confession suppressed and have other evidence in the case so it's not you know it's not fatal to the case, then we'd have

to take an interlocutory appeal, and I wouldn't propose that we get an automatic stay in that situation – on any interlocutory appeal – only in the situation where we're willing to certify that this is outcome determinative and the case can't go forward, and won't go forward, if we lose the appeal should this exist. Interlocutory appeals for the defense and prosecution in other situations should go as they always have and we'll take our chances on that.

JUSTICE MARKMAN: Mr. Baughman I noticed that SADO will be testifying after – after you're completed here. Anticipating that they're going to reiterate their concern about the constitutionality of Alternative A, do you have any thoughts in response? I think they're concerned that it's largely a legislative matter to determine the scope of the prosecutor's ability to appeal, not this Court's.

MR. BAUGHMAN: Well, I believe the Court has in the civil context has a rule defining what a final order is, and that's all we're asking you to do here. And, again, built into the rule is a recognition that the order that's been entered is in all but name a final order - it disposes of the case. I mean – you know I lost – and that's a good way to remember a case, but you may recall defense counsel at oral arguments said well, of course, it was a dispositive order, they couldn't proceed without the evidence. That's the kind of thing we're talking here. So I think to call that a final order – if the evidence is suppressed that the prosecutor certifies this case is over without it and if we lose the appeal, it will – will be over. Call that a final order, that's what a final order is it terminates the case. And to call it that in this circumstance seems to me perfectly permissible and within the authority of the Court.

CHIEF JUSTICE YOUNG: Thank you very much.

MR. BAUGHMAN: Thank you very much.

CHIEF JUSTICE YOUNG: Jonathan Sacks.

MR. SACKS: Good morning. Jonathan Sacks from the State Appellate Defender Office. From our perspective there's a good process right now, and interlocutory appeals should be taken if the prosecution disagrees with the suppression or other dispositive ruling, and we see this daily in the Court of Appeals orders I think. This week there've already been a few interlocutory motion to suppress rulings. And it's a good

process, it's a process that works and it seems to set up a brand new appeal of right is a pretty dramatic response to a very, very rare problem. I can – I can see this problem happening only really in two situations, both of which the prosecution has a very easy redress for. The first is where I guess maybe a judge doesn't dismiss a case upon a dispositive order I mean this – this seems to me that it shouldn't happen. I mean any defense attorney if – should simply ask for a dismissal of the case upon winning a motion to suppress that's dispositive. I just can't imagine how a defense attorney would want to keep their client facing charges or keep a case in limbo or something along those lines, and if somehow it doesn't happen then the prosecution can simply do an interlocutory appeal, ask for a stay, and then if a stay is not granted there's a very easy process for filing a stay in the Court of Appeals. There's a court rule that contemplates it, and it's – I suspect if there is this issue in Wayne County Circuit Courts now and again it can be pursued. And the other issue – the other time I see this coming up and this may have been the situation in *Richmond*, is where an assistant prosecutor just isn't that experienced and screws up. And rather than waiting for a judge to dismiss the case, they ask for dismissal themselves. That's the situation I see now and again with unpublished Court of Appeals cases. And, frankly, that's something that needs to be fixed internally, not something that needs to be fixed through the establishment of a claim of appeal. So our first real issue here is is this is something that is not necessary and that there's a good process for, and that we see the results of every single week when the Court of Appeals issues decisions on interlocutory appeals. Now – that's why it's not necessary. The companion piece to this is it's actually going to be harmful. When you set up an appeal of right, it means you no longer have this procedure in the Court of Appeals to get through cases very quickly, to separate ones that might be frivolous, that might not require months of extra work and preparation by the parties, and a lot of motions to suppress should be resolved real quickly with a denial of an application for leave then in the Court of Appeals and that's what happens now. Instead, a defendant's gonna be facing charges for up to an additional year while they're claim process continues. Potentially, defendant might remain incarcerated for that year while the – while there's a claim process rather than a leave process. It's – it's a solution that isn't needed that creates brand new problems. And Justice Markman I think you're absolutely correct, we do believe that there's a constitutional problem here –

CHIEF JUSTICE YOUNG: Can you expound on that?

MR. SACKS: Sure. There's a constitutional right to appeal for the defense. There are two statutes – MCL 770.12 and 770.3 – that talk about how a prosecutor might appeal, and there's case law from this Court defining what a final order is. The combination is it's the statute that controls prosecutor appeals not the –

CHIEF JUSTICE YOUNG: Are you suggesting that we don't have the constitutional authority to order practice to determine what in our system is a final order? Are you saying that's an unconstitutional exercise of authority by this Court?

MR. SACKS: I'm saying that the Legislature has set up a method for final orders of prosecutor appeals.

CHIEF JUSTICE YOUNG: I understand the Legislature has done something; I'm asking a different question. Are you saying that once the Legislature chooses to act in a particular area of procedure we are precluded – that we do not have constitutional authority under art 6 to regulate practice and procedure?

MR. SACKS: There has to be a case or controversy. In other words, the case law now - as Mr. Baughman indicated - there's civil cases and we cite them in our comment that define what a final order is when the case or controversy comes before this Court. This Court needs that case or controversy to actually define what a final order is. That seems to me that's –

CHIEF JUSTICE YOUNG: I don't – let me just – stop. Do you disagree with Mr. Baughman's characterization of a order of suppression that essentially destroys the prosecutor's ability to proceed with a case as anything other than a final order?

MR. SACKS: What makes me uncomfortable is this distinction. In other words, as Mr. Baughman indicated, there might be a case where a statement is suppressed, but yet there's a lot of other evidence to try the defendant.

CHIEF JUSTICE YOUNG: I – as I understand the – Proposal A is the prosecutor must certify that without the evidence that is suppressed his case is dead, that's what – that's what this Alternative A addresses. In that circumstance, do you disagree that a suppression order is anything other than a final order?

MR. SACKS: It's not that I don't trust the prosecution, it's I feel there's not a check –

CHIEF JUSTICE YOUNG: Just a moment. Answer -

MR. SACKS: Yes, I disagree.

CHIEF JUSTICE YOUNG: All right. Now tell why. Okay.

MR. SACKS: I disagree. And the reason for that is - is I don't think it's the prosecution's job to decide when it's a final order or not a final order on a motion to suppress. There are a lot of cases where reasonable minds might disagree how – if it's triable, if it's not triable – and the prosecution shouldn't be the ones splitting these hairs and saying well this motion's suppresses a final order, but this motion suppresses not a final order because there's other evidence. It – the realm for that is an interlocutory appeal and it's a distinction that should – should not have to be made. And even if – if perhaps it should be made, it certainly shouldn't be made by the prosecution. So thank you for your consideration.

CHIEF JUSTICE YOUNG: Thank you very much. Those are the only two speakers who are endorsed to speak to Item 2. Item 3 which is administrative matter 2010-12 concerning the amendment proposed to MRE 606. There are two speakers again the Baughman/Sacks team. Mr. Baughman.

ITEM 3 – 2010-12 – MRE 606

MR. BAUGHMAN: Your honors, Tim Baughman from Wayne County. I support both the amendment to 606 and the amendment to 2.512. Again, simply as a matter of experience from time to time we get motions for new trial based on the claim of jury impeachment. Almost always they involve claims that are intrinsic to jury deliberation. There is case law that says you can't do that, and one can pull that together – I think 606 is entirely consistent with the case law, it breaks no new ground and it would be very helpful to be able to cite the rule to judges to say that the verdict can't be attacked in this fashion. So, again, I don't think it's anything other than putting into the rule consistent with what the federal rule has - something that is true as a matter of case law.

CHIEF JUSTICE YOUNG: Can you – can you address 2.512 – that's – you seem to be singularly of those who've commented support a –

MR. BAUGHMAN: Well, if the Court – as the Court may be aware in the comment I sent in, there are a number of jurisdictions that have a rule similar or almost identical to 2.512 says. And there are cases from the – particularly in the federal system that say why they have such a rule. For example, the Seventh Circuit has said the purpose is to encourage freedom of discussion in the jury room – that is prevent – the rule we're talking about is post-verdict contact with jurors without permission of the court by the parties or their representatives – reduce the number of meritless post-trial motions, increase the finality of verdicts, and further rule 606(b) by protecting juries from harassment and the jury system from post-verdict scrutiny. The cases go on in that regard, and, again, it's more of an experiential matter. When we get these affidavits on a motion –

CHIEF JUSTICE YOUNG: But once – if 606 is modified so as to prevent the concern about ancillary impeachment of a verdict, what – why is the second change required when under current practice the jurors are instructed by judges, you don't have to talk to these folks if you don't want to.

MR. BAUGHMAN: Well, I don't think it's necessary. Again, as the Seventh Circuit has said if it furthers the rule.

CHIEF JUSTICE YOUNG: Why is it even – I mean –

MR. BAUGHMAN: Well, and I think frankly –

CHIEF JUSTICE YOUNG: You do acknowledge judges tell the jurors you don't have to talk to these –

MR. BAUGHMAN: I understand they don't – don't have – I think it also discourages what one might call the possibility that exists of post-verdict jury tampering. In other words, the – and I'm not saying that these have been untoward, but the cases I've seen come through have been some cases where after verdict you'll get an affidavit almost always from – involving intrinsic matters, but then one wonders well where did this come from. Did the juror contact counsel and it turns out that counsel, particularly if it's a retained counsel, has sent an investigator out to talk to the jurors to just sit down and say what went on in the jury room. And the case authority that's cited in my comment has a concern with that both in terms of supporting rule 606, avoiding jury harassment. You may tell the jurors they don't have to talk to anybody, but if somebody shows

up and says I represent the defendant and I want to talk to you about this, they may feel some obligation. And it raises the possibility of post-verdict tampering. If something does arise, the judge can allow you know can conduct an inquiry him or herself or allow the parties to talk to the jurors. Just recently – I thought it was interesting, I noticed – and this was post-mistrial, not post-verdict – Roger Clemens's attorneys got in trouble with the federal district judge there for talking to jurors after they were discharged without getting permission of the court because the rule in the district there – the District of Columbia federal court – was you have to get the permission of the judge just as we're – just as proposed here in 2.512. So 606 is by far to me the more important rule. I think 512 supports it and helps avoid situations that are – that could be untoward. But, again, I – and there's case authority and court rules around the country that are consistent with it, but 606(b) is the more important rule that I would be supporting.

JUSTICE MARKMAN: Mr. Baughman?

MR. BAUGHMAN: Yes.

JUSTICE MARKMAN: I understand that 606 largely parallels the federal rules, and I understand also that there doesn't seem to be any public opposition to the adoption, but the last time that we had a comprehensive set of modifications to the rules of evidence I believe this one was specifically rejected – I think largely to assure maximum flexibility on the part of trial courts in this process. Why was that not a legitimate concern, and, if it was, why doesn't it continue to be a legitimate concern today?

MR. BAUGHMAN: Well, I really can't speak to that. I don't what the concern was that kept it from being adopted before. To me it seems that this is consistent with the case decisions and that you know flexibility may be – may sound nice, but it also may end up as idiosyncratic applications of the law depending on who the judge is, and I think it's better to have a rule that lays out this is how this is approached rather than leave it to – you can have a juror testify here and you can't have one here. They can you know the rule does say when jurors can testify as to the unlawful influences or extrinsic influences, so I think that's covered in the rule and I think it just makes sense to proceed in that fashion.

JUSTICE MARKMAN: Do you know how many states have adopted some form or some parallel or counterpart to the federal rules?

MR. BAUGHMAN: No. I think many have; I didn't do a count because those jurisdictions that are – that use the federal rules as their base I think most of them have adopted this rule along with the rest, but I haven't got a count.

JUSTICE MARKMAN: To the best of your knowledge have those states that have adopted some counterpart to the federal rules largely adopted something similar to what Michigan is proposing to adopt now?

MR. BAUGHMAN: I think it's very similar to – very similar to what the feds have and ours –

JUSTICE MARKMAN: There hasn't been much debate over whether or not these are the you know these are the principal exceptions to when jurors ought to be allowed.

MR. BAUGHMAN: No, I think it's been controversial in the country, it's been fairly understood that this is the way this should proceed when you – when you're inquiring into a verdict after the case what jurors can and can't do. I don't think it's been a matter of controversy.

JUSTICE MARKMAN: Thank you.

CHIEF JUSTICE YOUNG: Thank you.

MR. BAUGHMAN: Thank you.

CHIEF JUSTICE YOUNG: Mr. Sacks.

MR. SACKS: Good morning again. Jonathan Sacks for the State Appellate Defender Office. We agree completely with Mr. Baughman as to the MRE 606 proposal. It codifies federal law and it codifies case law. It makes a lot of sense in terms of invading the – what should be sacred in jury deliberations. We don't think MCR 2.512 should be adopted. We think it creates a very cumbersome process in terms of looking at jury issues on appeal and will sort of cause a lot of potentially frivolous motions in trial courts and slow down a lot of very important investigations. We also are sympathetic to a lot of trial attorneys who commented and indicated they learn a lot from speaking to jurors after a case, and that educational process shouldn't be taken away. As to the SADO piece though – the piece on appeals – it's pretty rare. I think providing a context of the way this works in our office might be helpful.

It's pretty rare that we have these sort of juror investigations where we might feel like we need to speak to jurors. When it comes up we'll generally communicate with our clients, explain why we don't think it's a good idea and that'll sort of be the end of it because this rule does allow a party it seems without potentially an attorney to file a motion with the trial court to ask for an investigation. When it does happen from our end, there are two circumstances where it would. The far more common one is a jury as a witness situation and this might be if there is an allegation that a trial lawyer isn't paying attention or one time we had a case where it was alleged that a trial attorney fell asleep for a portion of the trial and we were actually able to confirm that by sending very innocuous letters out to a few jurors. We also – it also comes up in shackles issues where we have some basis for thinking that a juror might – jurors might have seen shackles on the defendant, but it's a process where we know if we went in front of the trial court that the trial court would say well because there is sort of a cover on the table there's no way that jurors would have seen this. We have the situation now with a case that this Court remanded, *People v Davenport*, for a hearing on jurors seeing shackles in Kalamazoo, and what has happened in *Davenport* is several jurors have testified that they did actually see the shackles. I think we – the six or seven of the jurors saw the shackles and everybody – the trial judge was very, very shocked by this. And had we started with the trial judge and asked for an order for this investigation it never would have been signed because the assumption was that protections were in place, and it was only this Court's remand that led to this hearing. These are very rare, but very important investigations and if there's an additional - very large hurdle in the process to go to the trial court first we think these investigations would – important investigations would first of all, not happen, and second of all, there would be a lot more frivolous requests to the trial court to have – to go in and talk to jurors when it's not appropriate. So our request is you adopt the proposal to Michigan Rules of Evidence, but not this new proposal that although some jurisdictions have I know most – many jurisdictions do not and it doesn't cause any problems.

CHIEF JUSTICE YOUNG: Thank you.

MR. SACKS: Thank you.

CHIEF JUSTICE YOUNG: Why don't you just stay there I mean we're gonna change the polarity and go to Item 4 – 2010-13 -

concerning amendment to MCR 6.001. Do you care to address that or do you need to go back to your seat –

MR. SACKS: No, no, I think I can handle it.

CHIEF JUSTICE YOUNG: Okay, good.

ITEM 4 – 2010-13 – MCR 6.001

MR. SACKS: Thank you. Our problem with 6.001 is the theme of the proponents seem to be this doesn't change anything but we like it. Whereas, the theme of the opponents seem to be this could be pretty devastating, this could get rid of a practice of discovery preliminary exams. I think it's pretty clear to me from carefully looking at the comments that reasonable minds can disagree about whether or not discovery's required at a preliminary exam per the court rule. It's – depending on the –

CHIEF JUSTICE YOUNG: Is that a good thing?

MR. SACKS: Excuse me?

CHIEF JUSTICE YOUNG: Is that a good thing that we have reasonable minds that differ about a practice as apparently significant as whether you get discovery before the preliminary exam?

MR. SACKS: I think not when there's a successful practice now which seems to be followed where discovery that's available is provided to the defense, and the result of that is plea bargains are sorted out, preliminary –

CHIEF JUSTICE YOUNG: But, again, if that were the practice, I think as defense counsel you'd think that's pretty good. If reasonable minds can differ and a judge can say no, you get nothing, I think you'd think that was a bad practice, right?

MR. SACKS: And I think the way to resolve that Justice Young –

CHIEF JUSTICE YOUNG: Is that right? You – if that were the judge's predisposition because his reasonable mind differed, you wouldn't like that, right?

MR. SACKS: Sure.

CHIEF JUSTICE YOUNG: All right. Well, why would we want – whatever the proper practice should be – why would we want people uncertain and judges capable of going either way? Why is that a good thing to sustain at this point?

MR. SACKS: Perhaps it's not ideal, but it seems to me the way to fix it would be if there's a jurisdiction where it's not allowed to then litigate it and get some sort of ruling. The ruling now appears to be *In re Bay Co Prosecutor* which does – which does indicate that discovery should be allowed at the preliminary exam.

CHIEF JUSTICE YOUNG: All right. Then why – why do reasonable – if *In re Bay Co Prosecutor* is the touchstone for the practice here, why do reasonable – why can reasonable minds differ –

MR. SACKS: Well, I understand –

CHIEF JUSTICE YOUNG: with what the requirements are?

MR. SACKS: Probably the better person to answer that question is Mr. Baughman. I understand from his comments that based on his statutory interpretation that discover should not necessarily apply to preliminary exams because of the session that discovery court rules are in and other court rules dealing with circuit courts. But the point –

CHIEF JUSTICE YOUNG: But you agree then – or at least you conceded that throws into question what the appropriate rules are for preliminary exam discovery.

MR. SACKS: Well, to me the appropriate solution is that suggested by both the State Bar and by our office which is to explicitly amend the court rules to indicate number one, that discovery should be provided at preliminary exams, not to leave the sort of ambiguity –

CHIEF JUSTICE YOUNG: Well, again, I mean I would have expected that to be your position not let's leave it up to jump ball every case – every judge to make a decision whether discovery is or is not available to preliminary exams.

MR. SACKS: That's correct, and I'm sorry – to me – and, yes, that is our position. It should be explicit, discovery should be available to preliminary exam, we think that's the case law now – absolutely that's our position. But as for this

court rule proposal, it's just not necessary. The better thing to do would be to make it explicit. Frankly, to make it explicit for misdemeanors as well where there's not an explicit right per the court rule, but the precise change –

CHIEF JUSTICE YOUNG: Or the *Bay Co Prosecutor* either, right?

MR. SACKS: Excuse me?

CHIEF JUSTICE YOUNG: Does *Bay Co Prosecutor* apply to misdemeanors?

MR. SACKS: It's a preliminary exam case; it doesn't apply to misdemeanors, that's correct. But this court rule as proposed is gonna create a problem where suddenly preliminary exam - discovery is not at preliminary exam and it's a – the practical result is gonna be immediate – less – more preliminary exams, less plea bargaining, less dismissals, more trials where a witness does not show up and there was not a proper opportunity to cross-examine them. This is another situation where – where the rule as written seems to work. The solution – the arguments for the solution are let's make it – let's make everything the same, and there's a real negative to the solution because there's a potential it will start limiting the discovery.

JUSTICE MARKMAN: Mr. Sacks I kind of see things the same way the Chief Justice does. On the last issue we were just talking about concerning the changes in MRE 606, as best as I can discern the history of that proposal it seems that previous objections were raised as a function of a concern that they would – they would create a one size fits all policy and we wouldn't have the flexibility and the discretion that exists when you don't have you know specific procedures for the questioning of jurors. Here, you're basically saying we don't want that flexibility – we do want that flexibility, we want local courts to make what are essentially discretionary decisions even if there's inconsistencies among those courts. I'm just having a hard time reconciling your position on the last matter with your position on the current matter.

MR. SACKS: This is my fault for being imprecise. To be sure, we wanted – we explicitly want there to be a right to discovery at the preliminary exam. Our anecdotal information from cases we see and then from looking at the comments and from talking to trial attorneys is that's more or less the case right

now that available discovery is provided and we're worried that's gonna change with this court rule proposal. The much better solution is absolutely Justice Markman to make it explicit that discovery should be provided at – that's available at preliminary exams.

JUSTICE MARKMAN: I mean help me out. How disparate are procedures around the state in terms of discovery in district courts?

MR. SACKS: I don't want to make assumptions where I'm not completely sure. I do know that in most places discovery seems to be provided, that's available, but in some counties prosecutors do take the position that discovery does not need to be provided and – I think Muskegon is one of those – and in those counties often it doesn't end up – the defense does not end up seeing it before the exam.

JUSTICE MARKMAN: So what I'm reading into your response is that the status quo is okay because things aren't too very disparate - by and large they seem to be affectively uniform around the state.

MR. SACKS: And, again –

JUSTICE MARKMAN: Am I misinterpreting what you're saying?

MR. SACKS: Justice Markman this is my fault for being imprecise.

JUSTICE MARKMAN: No, no.

MR. SACKS: My response is there are three things that could happen. The worst thing that can happen is adopt this rule that might limit discovery and get rid of a very successful practice. The better thing that could happen is keep things the same because in most places discovery is provided. But the best thing that could happen is let's get a rule explicitly stating provide discovery at preliminary exams.

JUSTICE MARKMAN: And when we get to that issue what would you imagine would be the major issues of division between yourself and say Mr. Baughman or the prosecutorial community?

MR. SACKS: I expect –

JUSTICE MARKMAN: Are there any great issues that you've seen reflected around the district courts in the state?

MR. SACKS: I expect some prosecutors may feel it's an unfair burden to be able to provide everything this early in the stage. I think it shouldn't necessarily parallel 6202 which sets up some time constraints, time limits that are not feasible in district court, and it should potentially just be a (inaudible) of - discovery that is available at this time. Obviously, lab reports, some things like are not gonna be available that early in the process.

CHIEF JUSTICE YOUNG: Thank you.

MR. SACKS: Thank you.

CHIEF JUSTICE YOUNG: Tag Mr. Baughman while you're going back there.

MR. BAUGHMAN: Tim Baughman from Wayne County. It is not my position and it's been characterized many times that it is; it's not my position that there should be no discovery at the exam. It's my position that 6.201 by its very terms does not apply and I don't think one reasonably can say it does. You have a rule for pretrial discovery that is triggered – the compliance with it is triggered on request within 21 days after the request and you have an exam that's to occur within 14 days after arraignment on the warrant. Those don't compute because the extents of pretrial discovery in 6.201 is not deemed at the exam, that's to occur afterward. So it doesn't mean you can't have any discovery before the exam –

CHIEF JUSTICE YOUNG: What does it mean then?

MR. BAUGHMAN: Pardon?

CHIEF JUSTICE YOUNG: What does it mean? I – assuming you're – I mean just the logic of the timing suggests there's a problem with the rules. Is it your position – I guess it isn't – you said it doesn't mean that discovery can't happen before the preliminary examination. What triggers and what is the scope of that obligation?

MR. BAUGHMAN: The authority is as Mr. Sacks has said the *Bay Co* case said some time ago what I would call rudimentary discovery can be directed before that and it usually occurs I think around the state and most places by cooperation. For

example, in our county it's almost always done. We give the defense a copy of the police write-up.

CHIEF JUSTICE YOUNG: But, again –

MR. BAUGHMAN: I think that would be adequate.

CHIEF JUSTICE YOUNG: But, again, the thing that concerns me is you've brought this to our attention that there is a – essentially an unregulated area prior to the preliminary exam concerning discovery. The rule doesn't seem to fit it, there are practices out there that can vary – apparently in Muskegon the prosecutor doesn't do this, in Wayne the prosecutor does – is that a – the kind of environment we want to have –

MR. BAUGHMAN: No, I don't think it is. And as I said in my comment at the end having a specific rule for preexam discovery or for misdemeanor discovery may well be a good thing and that's a conversation that should be had. What's before the Court right now is to make clear that 6.201 cannot possibly apply before the exam. Now I was the reporter on the committee to revise the rules of criminal procedure some years ago, and at the urging of the district judges on the committee we proposed a misdemeanor discovery rule which the Court didn't adopt. So there is no – as it's been indicated – rule of any kind for misdemeanor trials for discovery yet discovery occurs. Now is that a good thing – should it be uniform – probably it should be. But the Court chose not to do it at that time, maybe it didn't like the rule that the committee came up with. I think I would have no problem with the rule for pre-exam discovery – we might discuss what the content of that might be because I think it should be understanding the purpose of the exam to weed out groundless and unsupported charges – it should be very rudimentary.

CHIEF JUSTICE YOUNG: Isn't that what we should be focusing on then at this point?

MR. BAUGHMAN: I'd be happy to propose a pre-exam discovery rule - right now I'm just concerned that judges understand that they can't order the full panoply of discovery under 6.201 before an exam sometimes – and it doesn't happen a lot, but it does happen – even adjourning exams for that purpose.

CHIEF JUSTICE YOUNG: Does the rule of *Bay Co Prosecutor* pretty much cover the area adequately?

MR. BAUGHMAN: I'm sorry?

CHIEF JUSTICE YOUNG: The *Bay Co Prosecutor* case.

MR. BAUGHMAN: Yeah.

CHIEF JUSTICE YOUNG: Does that pretty well cover the area?

MR. BAUGHMAN: I'd have to go back and review it, but I think so because I think it's kind of a rudimentary type of discovery.

CHIEF JUSTICE YOUNG: Then maybe we need to codify *Bay Co*.

MR. BAUGHMAN: I think we could codify something like that and it would be consistent with the practice in most of the state which is, again, you turn over the police report – this is you know this has all gotta happen with 14 days – we don't want to slow down the exam process – so it's gotta be pretty rudimentary, but make that uniform so if there's a Muskegon County – I'm not disparaging them, I don't know – but if they're refusing to do anything, then maybe they shouldn't be – that shouldn't be occurring there it should be uniform. So that may be something that should be done. I'd be happy to look at *Bay Co* and suggest some language – maybe it could be done in conjunction with this. But the point of a lot of the comments was that we're taking – by saying 6.201 doesn't apply you're taking away discovery at the exam – 6.201 does not apply. It just – it never has.

CHIEF JUSTICE YOUNG: I understand. Thank you.

MR. BAUGHMAN: Thank you very much.

CHIEF JUSTICE YOUNG: Item 6 – 2010-19 – concerning proposed amendments to MCR 7.100. Liisa Speaker.

ITEM 6 – 2010-19 – MCR 7.100

MS. SPEAKER: Good morning your honors. I'm here in my capacity as the Chair of the State Bar of Michigan's Appellate Practice Section. I know you've had a chance to review our six pages of comments on this proposed rule. The first point I want to make is that we genuinously support the changes to the circuit court appeals rules. The group that worked on this for ten years did a really good job, and it is very much overdue for those circuit court appeals rules to be overhauled. And so we

do want to convey that we very much support the package. Of course, as a group of appellate practitioners we have several comments that we wanted to share with you. A couple of them are really just to avoid confusion in the future; a couple of them have to do with timing of briefs because appellate practitioners were concerned that we don't have enough time to fit these into the schedule and we want the circuit court appeals to be taken seriously. The third area I wanted to just spend a minute on this morning are two of the proposals that are I think are more significant – significant to the extent that they change what the committee had put together. The first one has to do with the allowing the reply brief at the application stage. That is consistent with another rule that we had proposed in the Court of Appeals, which is also consistent with the current Supreme Court practice and practice in the federal courts, and I understand that our proposal as to 7.205 is not before the Court today so I don't know how you want to handle that, but we would like you to consider allowing reply briefs at the application stage and we –

CHIEF JUSTICE YOUNG: Would you – do you think this is a significant enough change that it requires that that provision be published separately and broken apart from this whole ten-year proposal?

MS. SPEAKER: It could be, yes, your honor, and it would – I guess if the Court decided to do that we would –

CHIEF JUSTICE YOUNG: I said – did you hear what I asked? Is it so separate and significant that it needs to be separately treated?

MS. SPEAKER: Only because there is not a current court –

CHIEF JUSTICE YOUNG: Is your answer, yes, for –

MS. SPEAKER: Yes, only because there's not a current court of rule – Court of Appeals rule on that and we have a proposal pending –

CHIEF JUSTICE YOUNG: A Court of Appeals rule to allow reply briefs.

MS. SPEAKER: At the application stage without a motion.

CHIEF JUSTICE YOUNG: Okay.

MS. SPEAKER: And that would be the only reason. If the Court of Appeals rule currently allowed it, then I would say the answer would be no, so I tend to agree with you your honor that perhaps it would be good enough to just to pull it out separately and maybe for us to modify our proposed rule change to identify both circuit court appeals practice and Court of Appeals practice. The only other comment that we had that is –

CHIEF JUSTICE YOUNG: Would you – do you want this ten-year project held for that second –

MS. SPEAKER: No, your honor.

CHIEF JUSTICE YOUNG: Okay.

MS. SPEAKER: No, your honor. And that's why I tend to agree with you because it's more important that the circuit court appeals rules finally be updated than to allow the small provision about replies at the application stage to hold it up. The only other comment that we had that was significant was regarding the record on appeal under 7.109. The practitioners that are on council spent a lot of time discussing all of the – all of the changes in the circuit court appeals rules practice, and I think you should understand that when we discussed these we provided actual examples of problems that practitioners were having with the – being notified that the record had been sent – of actually getting the record sent from the district court or probate court to the circuit court, and we weren't discussing hypotheticals, we were discussing actual problems that occurred and sometimes did result in dismissal of an appeal when the appellate practitioner has no control over what the probate court and the trial court does, and there was a lot of confusion among the lower courts about what their obligation is even though practitioners regularly will quote the court rules to people in the clerks offices at those lower courts. We just feel that the reason we changed 7.109 to have the circuit court provide notice that the record has been filed is because they're in the better position to do so, and they're in a better position to make sure that the record is transmitted being the higher court over the lower court. So that rule was particularly problematic now and it still had problems under the proposed revisions. So we just ask that you consider our comments. Thank you.

JUSTICE MARILYN KELLY: Let me ask you a question. If we were to adopt this proposal but make amendments that the committee hasn't yet reviewed, we could – we could give the

effective date a later – a later date than January 1 which is the normal date and that would give the committee an opportunity to tell us if they could see big problems with what we've done. Would that in your mind be preferable to our tabling this or sending it out for another public response period?

MS. SPEAKER: I think the position of the Appellate Practice Section is that anything would be better than tabling it. So even a January 1st effective date – I mean I think our position in discussing this among counsel is that if we have problems with any of the specific provisions if something that maybe – that we presented to you in our comment today, is not adopted by this Court, I think we're prepared to individually address specific rules. Because this is such a large package and is so all encompassing, I think we would prefer that it be adopted one way or the other the sooner the better.

CHIEF JUSTICE YOUNG: Well, it is a large piece of work, and I'm concerned that it being so significant a change in the practice of circuit court appeals that a January 1st effective date would be quite a burden on anybody except members of your committee to incorporate in their practice. Don't you agree that that would be a - almost impossible for most practitioners to come up to speed on it?

MS. SPEAKER: No, your honor, I disagree because the procedures right now are so complicated and so time consuming for practitioners that any improvement will make it easier for the practitioner to understand who may have a -

CHIEF JUSTICE YOUNG: So you're urging that we put this in place in less than a month, right?

MS. SPEAKER: I'm not – I'm not advocating for a specific date if –

CHIEF JUSTICE YOUNG: Well, we do it quarterly. The first occasion would be January 1st, do you think that's – gives the Bar and bench sufficient time to incorporate them into their practice?

MS. SPEAKER: What I was gonna say your honor is that I think it's sufficient time for practitioners, the question is is it sufficient time for the Bar, particularly some of the court rules – how they affect the circuit court – there's significant changes -

CHIEF JUSTICE YOUNG: The Bar –

MS. SPEAKER: I'm sorry – the bench – I meant the bench your honor.

CHIEF JUSTICE YOUNG: The bench, okay.

MS. SPEAKER: So that cause more of a concern I think for the bench than for practitioners. I think practitioners will work –

CHIEF JUSTICE YOUNG: Well, given whatever your concerns are, what are you urging on us? Do we put these in place in January or a quarter from now?

MS. SPEAKER: I think a quarter from now would be fine, but to table it –

CHIEF JUSTICE YOUNG: That would be April – I think – or is that May – May –

MS. SPEAKER: To table it for a whole new round of comments – may I – I don't know what this Court is thinking about doing and so obviously it's asking me to speculate based on revisions that I haven't seen –

CHIEF JUSTICE YOUNG: You'll like them.

MS. SPEAKER: But to the extent that the package is an improvement even if some of our recommendations are rejected, I think we can deal with it, and I think practitioners will be very eager to accept any of the changes that come through. And I – discussing this with you I think that you're right that January 1st is only a month away –

CHIEF JUSTICE YOUNG: It's less – no, it is a month, yeah.

MS. SPEAKER: And I think maybe pushing it to the next quarter would allow the Appellate Practice Section maybe in conjunction with the Litigation Section to advertise, to educate, maybe do some training, which I think would be helpful to the practitioners and perhaps to the bench too if they wanted to participate.

CHIEF JUSTICE YOUNG: Thank you.

MS. SPEAKER: Thank you your honors.

CHIEF JUSTICE YOUNG: Thank you very much. That concludes all of the matters for which there are endorsed speakers. We appreciate you coming out and helping educate us this morning. The public hearing on the administrative matters is concluded. Thank you.